Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	GN Docket No. 25-133
Delete, Delete, Delete	)	

COMMENTS OF THE AD HOC BROADBAND FOR RURAL HEALTH GROUP

Established in 2024, the Ad Hoc Broadband for Rural Health Group (BRHG) consists of seven organizations that are long-time participants in the Federal Communications Commission (FCC or Commission) Rural Health Care program (RHC).[1] Together, they facilitate the participation of over 5000 health care provider sites in the RHC program. BRHG, by its attorney, respectfully submits these comments in the Commission's *Delete, Delete, Delete* proceeding, with the goal of alleviating regulatory burdens.[2]

[1] The BRHG consists of the following organizations:

- **ADS Advanced Data Services, Inc.** Based in Mount Pleasant, TX, supports 265 HCPs, mostly in Alaska, but also Kansas, Kentucky, Nebraska, Missouri, and West Virginia.
- **Colorado Telehealth Network** supports 509 HCPs across Colorado, Montana and Nebraska.
- **Community Hospital Corporation**. Based in Plano, TX; supports over 1000 HCPs in 41 states including Texas, California, Idaho, Washington, and Nebraska.
- **HealthConnect Networks**. Based in Bangor, ME; supports 1200 HCPs in 20 states including Kentucky, Tennessee, New York, Wyoming and Hawaii.
- **New England Telehealth Network**. Supports 1350 HCPs in 6 states, including Maine, New Hampshire, Vermont, and Massachusetts.
- **North Carolina Telehealth Network**. Supports 447 HCPs across North Carolina.
- S**outhern Ohio Health Network**. Supports 320 HPCs across Southern Ohio.

[2] *In Re: Delete, Delete, Delete*, GN Docket No. 25-133, Public Notice, DA 25-219, at 1-2 (*rel*. Mar. 12, 2025) ("recognizing that in addition to imposing unnecessary burdens, unnecessary rules may stand in the way of deployment, expansion, competition, and technological innovation in communications that the Commission is directed to advance.") (footnotes omitted).

Specifically, BRHG suggests the Commission delete the following rules as unnecessary and burdensome:

1. The requirement that dark fiber be lit within one-year.[3] Because eligible health care providers (HCPs) need dark fiber to provide a physically diverse network and/or for emergency back-up connectivity, the requirement to light fiber within a year forces healthcare providers (and the Healthcare Connect Fund) to incur unnecessary costs.
2. The requirement that HCF participants, particularly consortia, file annual reports with USAC.[4] While this requirement may have made sense back in 2012 when it was promulgated, we suspect it no longer provides meaningful information to the Commission or USAC. If it does not, it should be deleted.

In addition, while not rules, in the spirit of the *Delete, Delete, Delete* proceeding, BRHC respectfully requests the Commission consider how implementation of USAC's non-public administrative procedures for the RHC program[5] is affecting program administration and efficiency. The Commission can mitigate these impacts through explicit public guidance to USAC

[3] 47 C.F.R. § 54.612(b)(1). Support for recurring charges associated with dark fiber is only available once the dark fiber is "lit" and actually being used by the health care provider. Support for non-recurring charges for dark fiber is only available for fiber lit within the same funding year, but applicants may receive up to a one-year extension to light fiber, consistent with § 54.626(b), if they provide documentation to the Administrator that construction was unavoidably delayed due to weather or other reasons.

[4] 47 C.F.R. § 54.618.

(a) Each applicant must file an annual report with the Administrator on or before September 30 for the preceding funding year, with the information and in the form specified by the Wireline Competition Bureau.
(b) Each applicant must file an annual report for each funding year in which it receives support from the Healthcare Connect Fund Program.
(c) For consortia that receive large upfront payments, the reporting requirement extends for the life of the supported facility.

[5] *See*, *e.g.*, Letter from Matthew G. Baker, Deputy Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, to Mark Sweeney, VP, Rural Health Care Division, Universal Service Administrative Company, WC Docket 02-60, DA 25-258 (Mar. 24, 2025) (approving Rural Health Care Program Funding Year 2025 Funding Request Review Procedures).

on rule interpretation and application, and more timely decisions on appeals of USAC decisions.[6] A timely appeals process is necessary to efficient program administration and to ensuring that unpublished and non-public administrative procedures are in full alignment with published Commission rules.

I. The Commission should Delete the Requirement that Dark Fiber Be Lit

When the Commission established the HCF program in 2012, it made dark fiber an eligible service but adopted the requirement from the E-Rate program that eligibility was conditioned upon the fiber being lit within one year.[7] There are several reasons why BRHG believes this rule should be deleted from the HCF program. First, unlike the E-Rate program where physically diverse (so-called "redundant") connections are ineligible for funding, physically diverse connections are eligible in the HCF. This makes sense given that physical diversity for health care providers (HCPs) helps ensure uninterrupted connectivity for life-saving medical care.

In health care, allowing dark fiber to remain dark is a cost-saving measure the Commission should embrace. Dark fiber is inherently dark for a reason. HCPs typically lease and utilize dark fiber for failover and disaster recovery, relying on that infrastructure only if and when it is needed. While fiber is periodically lit for testing purposes, the cost to continually light dark fiber is prohibitive and generally does not serve HCP needs to be lit on a continual basis. Requiring that

[6] *See*, *e.g.*, 47 C.F.R. § 54.724(b) ("The Commission shall issue a written decision in response to a request for review of an Administrator decision that involves novel questions of fact, law, or policy within ninety (90) days.").

[7] *See Rural Health Care Support Mechanism*, Final Rule, 73 Fed. Reg. 13936, 13949 (2013) (*HCF Final Rule*) ("In the E-rate program, fiber must be lit within the funding year for non-recurring charges to be eligible. We adopt this requirement in the [HCF].").

dark fiber be lit places unnecessary burdens on HCPs and does not align with the primary functional purpose of that dark fiber.

The light-within-one-year requirement also discourages investment in dark fiber technologies. Dark fiber is typically leased with monthly charges which keep costs relatively low; only at the time of lighting do recurring data transport charges get assessed to the HCP by the owner of the dark fiber. Providing funding for dark fiber leases that are not lit keeps HCF funding at a lower level than if the fiber were lit. Because unlit dark fiber is valuable to HCPs that need failover services, it should be encouraged rather than discouraged. Removing this regulatory burden on participating HCPs would allow them to leverage HCF funding for dark fiber leases in a more straightforward and predictable way which better aligns with program goals.

II. The Commission Should Consider Deleting the Annual Report Requirement for the HCF

Section 54.618 of the Commission's rules requires HCF program participations to annually report data to USAC regarding the Telehealth applications being utilized using HCF-funded services. This requirement was codified in 2013 when the Commission established the HCF,[8] carrying forward a similar requirement that had applied in the RHC Pilot Program. The Commission explained then: "Data from participants and from [USAC] are essential to the Commission's ability to evaluate whether the [HCF] program is meeting the performance goals adopted and to measure progress toward meeting those goals."[9]

BRHG respectfully suggests data on the Telehealth applications used by HCF participants is no longer a meaningful metric for measuring HCF performance goals. Indeed, given how much

[8] *See HCF Final Rule*, 73 Fed. Reg. at 13968.

[9] *See id.*

Telehealth has grown and changed since 2012, a typical consortium in the HCF – which may include dozens or even hundreds of participating HCPs – likely selects every available Telehealth application available for purposes of this report ("all of the above"). This alone makes the data on Telehealth applications that is gathered by USAC of limited value. However, if the Commission still finds that gathering such data is important, it can be gathered episodically rather than as an annual requirement.

Accordingly, we respectfully suggest the burdens of complying this requirement are no longer justified by the value of the information gained by retaining the requirement.

III. Public Commission Guidance and Timely Decisions on FCC Appeals Can Ensure Unpublished Administrative Procedures Fully Align with Published and Codified Program Rules

In 2019, as part of an effort to increase transparency and efficiency in the RHC program,[10] the Commission codified the requirement that USAC "document all of its administrative procedures for the RHC Program, including procedures for measures adopted by this Report and Order, and submit them to the Commission staff for review and approval."[11] While the Commission's approval of USAC's procedures is public, the procedures themselves are not. BRHC strongly supports direct oversight by the Commission of USAC's procedures for application processing, however we have experienced many cases where USAC decisions appear inconsistent with clear HCF rules, with USAC typically invoking these non-public procedures as compelling a

[10] *See Promoting Telehealth in Rural America*, Final Rule, 84 Fed. Reg. 54952 (2019) ("In this document, the [Commission] takes a variety of measures to promote transparency and predictability, and further the efficient allocation of limited Rural Health Care Program resources while guarding against waste, fraud and abuse.") (*Promoting Telehealth Final Rule*).

[11] *See Promoting Telehealth Final Rule*, 84 Fed. Reg. at 54975.

particular outcome. In many such cases, this has resulted in appeals filed with USAC and then the Commission.

For example, the New England Telehealth Consortium (NETC) recently received a funding decision denying funding for a commodity Internet access service used by the entire consortium. This decision broke with long-standing practice (since 2012) of funding this specific service – where the service is clearly eligible under program rules.[12] The merits are not relevant here. The issue is USAC's inexplicable break with long-standing practice for how it treated this specific service – a break which we can only guess was required by non-public changes in USAC's administrative procedures approved annually by the Commission. This decision is impacting 100s of HCPs that participate in NETC. A timely appeal decision in situations like this is essential to the efficient functioning of the program.

Another example of this was when USAC several years ago began denying eligibility determinations for sites that were not yet open to the public. Such determinations were being sought pursuant to Section 54.601(b) of the rules which then provided that "Health care providers in the Healthcare Connect Fund Program may certify to the eligibility of particular sites at any time prior to, or concurrently with, filing a request for services to initiate competitive bidding for the site." *See* 47 C.F.R. § 54.601(b) (2024) (emphasis added). Notwithstanding the

[12] *See* 47 C.F.R. § 54.612(a) ("eligible health care providers may request support under the Healthcare Connect Fund Program for any advanced telecommunications or information service that enables health care providers to post their own data, interact with stored data, generate new data, or communicate, by providing connectivity over private dedicated networks or the public internet for the provision of health information technology."). An appeal on this matter is currently pending at the Commission. *See New England Telehealth Consortium, Funding Request Number RHC20230027697*, Request for Review of a Decision of the Universal Service Administrator, Petition for Waiver, WC Docket 02-60 (filed Jan. 23, 2025), https://www.fcc.gov/ecfs/search/search-filings/filing/1012424990404.

clear language of the rule, USAC broke with prior practice and not only denied eligibility for those sites but prevented them from participating in competitive bidding.

While the Commission subsequently established a rule governing conditional eligibility for HCPs, we note, for purposes of competitive bidding, whether a site is eligible or ineligible has never been a barrier under the HCF rules for participation in the consortium competitive bidding process. Indeed, the long-standing "fair share" requirements for HCF (and in the Pilot Program before it) anticipate a mixture of eligible and ineligible locations in HCF procurements. *See*, e.g., 47 C.F.R. § 54.617(d)(1) ("**Ineligible sites**. Eligible health care provider sites may share expenses with ineligible sites, as long as the ineligible sites pay their fair share of the expenses."). Under the current and previous rules, a final determination of eligibility only matters for purposes of committing funding.

Because USAC's administrative procedures document is non-public, applicants are working in an environment where program administration can change without advance notice and in ways that appear to conflict with the plain language of program rules. This seems to run counter to Commission's directive to improve program transparency. The way the administrative procedures process is functioning also obscures FCC guidance being given to USAC about how to apply the program rules in particular situations. This contrasts to when the Commission provides explicit, public guidance to USAC, which benefits both USAC program administration and program participants.[13] Implementing significant programmatic changes from year-to-year via a non-public set of administrative procedures creates unpredictability for applicants and runs counter

[13] *See, e.g.*, *The Wireline Competition Bureau Provides Guidance Regarding the Commission's Rules for Determining Rural Rates in the Rural Health Care Telecommunications Program*, Public Notice, DA 19-92 (WCB 2019).

to the Commission's stated goal to reduce "the administrative cost for health care providers by reducing the need for hiring skilled professionals to navigate the process and reducing the number of hours spent on completing the forms."[14]

IV. CONCLUSION

We respectfully request the Commission consider deleting Sections 54.612(b)(1) and 54.618 of the Commission rules as these rules are not necessary to the efficient functioning of the HCF program, and thus the burdens they impose on applicants are no longer warranted. We also respectfully urge the Commission to rely more on explicit public guidance to USAC regarding applications of program rules, and to accelerate the rate at which appeals are decided to increase transparency and clarity regarding how USAC should be applying program rules.

Respectfully submitted,

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April 11, 2025

[14] *See Promoting Telehealth Final Rule*, 84 Fed. Reg. at 54974.